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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 SAMUEL FLORES,

10 Petitioner,

11 vs.

12 STATE OF NEVADA, et al.,

13 Respondents.
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Case No. 3:11-CV-00236-HDM- (VPC)

ORDER

15 Defendants have removed this action from the Seventh
16 Judicial District Court of the State of Nevada. Before the court
17 is plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983.
18 Plaintiff is a prisoner in the custody of the Nevada Department of
19 Corrections. The court has reviewed the complaint pursuant to 28
20 U.S.C. § 1915A, and the court will dismiss the State of Nevada in
21 relation to the Nevada Department of Correction from this action.

22 Plaintiff has sued the State of Nevada in relation to the
23 Nevada Department of Correction and Eldon K. McDaniel, warden of
24 Ely State Prison, in his individual and official capacities. A
25 suit against a prison officer in his official capacity is another
26 way of suing "an entity of which an officer is an agent." Kentucky
27 v. Graham, 473 U.S. 159, 165 (1984) the Section 1983 states, in
28 relevant part:

1 Every person who, under color of any statute, ordinance,
2 regulation, custom, or usage, of any State or Territory
3 or the District of Columbia, subjects, or causes to be
4 subjected, any citizen of the United States or other
5 person within the jurisdiction thereof to the deprivation
of any rights, privileges, or immunities secured by the
Constitution and laws, shall be liable to the party
injured in an action at law, suit in equity, or other
proper proceeding for redress (emphasis added)

6 "[N]either a State nor its officials acting in their official
7 capacities are 'persons' under § 1983." Will v. Michigan Dept. of
8 State Police, 491 U.S. 58, 71 (1989). The same rule applies to
9 agencies that are arms of the state, such as the Nevada Department
10 of Corrections. Doe v. Lawrence Livermore Nat. Laboratory, 131
11 F.3d 836 (9th Cir. 1997). The court will dismiss the State of
12 Nevada and McDaniel in his official capacity. Furthermore,
13 plaintiff has filed two motions to strike the State of Nevada and
14 the Nevada Department of Corrections from this action (#4, #8), and
15 the court will grant these motions.

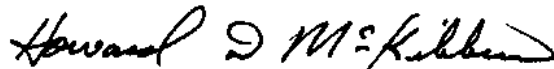
16 Plaintiff claims that he was charged twice in prison
17 disciplinary proceedings for only one event of use of intoxicants,
18 that no evidence exists to support the second charge, and that
19 defendant McDaniel upheld the two sanctions. That part of the
20 complaint states a claim upon which relief can be granted, and the
21 court will direct defendant McDaniel to respond to the complaint.

22 IT IS THEREFORE ORDERED that plaintiff's motions to
23 strike the State of Nevada and the Nevada Department of Corrections
24 from this action (#4, #8) are **GRANTED**. The State of Nevada in
25 relation to the Nevada Department of Corrections, and defendant
26 McDaniel in his official capacity, are **DISMISSED** from this action.

1 IT IS FURTHER ORDERED that defendant McDaniel shall have
2 twenty-one (21) days from the date on which this order is entered
3 to file and serve an answer or other response to the complaint.

4 IT IS FURTHER ORDERED that henceforth, plaintiff shall
5 serve upon defendants or, if appearance has been entered by
6 counsel, upon the attorney(s), a copy of every pleading, motion or
7 other document submitted for consideration by the court. Plaintiff
8 shall include with the original paper submitted for filing a
9 certificate stating the date that a true and correct copy of the
10 document was mailed to the defendants or counsel for the
11 defendants. The court may disregard any paper received by a
12 district judge or magistrate judge which has not been filed with
13 the clerk, and any paper received by a district judge, magistrate
14 judge or the clerk which fails to include a certificate of service.

15 DATED: May 24, 2011.

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HOWARD D. MCKIBBEN
United States District Judge